



\*80-SBE-025\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JESUS GONZALEZ )

Appearances:

For Appellant: Jesus Gonzalez, in pro. per.  
For Respondent: Claudia K. Land  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jesus Gonzalez against a proposed assessment of additional personal income tax in the amount of \$155.00 for the year 1976.

Appeal of Jesus Gonzalez

Appellant's 1976 federal income, tax return was audited by the Internal Revenue Service, resulting in the disallowance of his claimed status as a head of household for that year, as well as personal exemption deductions claimed for his mother and brother. Upon receipt of the federal audit report, respondent made corresponding adjustments under state law and recomputed appellant's California personal income tax liability for 1976 accordingly. Whether the resulting proposed assessment of additional tax was correct is the sole issue presented by this appeal.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that an assessment issued by respondent on the basis of a federal audit is presumed to be correct, and the burden is on the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Khristi A. Shultz, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.)

At the hearing before this board, appellant offered oral testimony and documentary evidence in support of his position. On the basis of the evidence presented, we conclude that appellant has sustained his burden of proving he was entitled to file his 1976 California personal income tax return **as a head of household and to claim his mother and brother as dependents** in that taxable year.


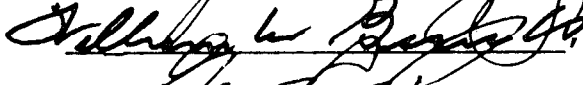

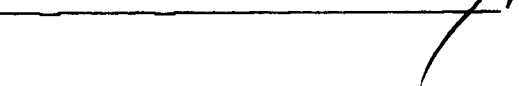
O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Jesus Gonzalez

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,  
pursuant to section 18595 of the Revenue and Taxation Code,  
that the action of the Franchise Tax Board on the protest of  
Jesus Gonzalez against a proposed assessment of additional  
personal income tax in the amount of \$155.00 for the year  
1976, be and the same is hereby reversed.

Done at Sacramento, California, this 4th day of  
March , 1980, by the State Board of Equalization.

	Chairman
	Member
	Member
	Member